IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 3236 OF 2004.

Gopal Ramchandra Vaje. .... Petitioner.

versu.

Tukaram Ramchandra Vaje & ors. .... Respondents.

Shri S.G.Deshmukh for the Petitioner.

Shri G.S.Godbole for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 8th December, 2004.

P.C.:

1. Heard the learned Counsel appearing for the parties.

2. The challenge in this petition under Article 227 of the Constitution of India is to the order dated 10th March 2004. By the said order the learned trial Judge appointed the Sub-Registrar, Shriwardhan as Court Commissioner to take inspection of the suit property and to ascertain the market value of the suit property as on 30th January 2003. My attention has been invited to the order dated 12th April 2004 passed by this Court.

Paragraph 6 of the said order reads thus:

> "6. Hence, issue notice returnable after 4 weeks to the respondents to show cause as to why the impugned order should not be kept in abeyance till both the parties lead their

evidence. Hamdust allowed."

3. Shri Deshmukh pointed out that after notice was issued by this Court, the Court Commissioner appointed under the impugned order has submitted his report to the trial Court and in fact the Commissioner has been examined on oath. He submitted that the order appointing the Commissioner and in particular appointing the Sub-Registrar as the Commissioner is illegal and the same deserves to be set aside.

4. Shri Godbole, the learned Counsel appearing for the Respondents submitted that the impugned order has already been implemented and therefore, the petition need not be entertained.

5. I have considered the rival submissions. As the order appointing the Commissioner has already been implemented, I am not inclined to entertain this petition under Article 227 of the Constitution of India. If so advised, the Petitioner can always challenge the said order in an appeal which may be preferred by the Petitioner against final order which may be passed in the suit. The Petitioner can always submit objection in writing to the report of the Commissioner on all permissible grounds. If the Petitioner has not filed objections till today, he can be permitted to file objections in four weeks from today.

6. Hence the petition is not entertain and the same is rejected with no order as to costs. It is made clear that notwithstanding rejection of this petition, the Petitioner can always challenge the impugned Judgment and Order in an Appeal which may be preferred by him against the final order passed in the suit. If the Petitioner has not filed objections to the Commissioner's report, it will be open for the Petitioner to file objections in writing to the Commissioner's report within a period of four weeks from today. If such an objection is filed, the trial Court shall consider the same in accordance with the law. All contentions in that behalf are expressly kept open.

7. Parties and the concerned Court to act on the authenticated copy of this order.

Judge.